



"Brooks, Patrick J."
<PBrooks@ssd.com>
06/13/2006 05:51 PM

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367006

To Victoria Powers <vpowers@szd.com>,
Alan.Tenenbaum@usdoj.gov, Elise.Feldman@usdoj.gov,
Betsey.Streuli@deq.state.ok.us, ebessey@kdhe.state.ks.us,
cc "Lerner, Stephen D." <SLerner@ssd.com>,
TKreller@milbank.com, "Winters, Karen"
<KWinters@ssd.com>, LPutman@milbank.com, Stephen
bcc

Subject RE: CTA

I apologize. I overlooked the phrase "or other Funding" provided by the Committee in respect of the language it proposed to Section 5.2. See attached.

From: Victoria Powers [mailto:vpowers@szd.com]
Sent: Tue 6/13/2006 6:03 PM
To: Brooks, Patrick J.; Alan.Tenenbaum@usdoj.gov; Elise.Feldman@usdoj.gov;
Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us; PierceJC@michigan.gov;
JMorgan@atg.state.il.us; garypie.catherine@epamail.epa.gov; monroeb@michigan.gov
Cc: Lerner, Stephen D.; TKreller@milbank.com; Winters, Karen; LPutman@milbank.com; Stephen
Samuels; M. Colette Gibbons; wvawest@ameritech.net; Garypie.Catherine@epamail.epa.gov;
Cintron-Silva.Maria@epamail.epa.gov
Subject: RE: CTA

Here is proposed language:

2.1 (e) After consultation with the applicable Lead Agency or Lead Agencies, the Custodial Trustee may, but shall not be obligated to, obtain insurance or other similar financial instrument—the cost of which shall be paid out of the relevant Custodial Trust Accounts or Custodial Trust Accounts—to cover or supplement all or part of the Environmental Costs at one or more Properties. In addition, the Custodial Trustee may, but shall not be obligated to, obtain insurance—the cost of which shall be paid out of the Administration Custodial Trust Account—for the benefit of the Custodial Trust Parties (as defined herein) and the Custodial Trust in connection with and in any way related to their roles, duties and obligations under this Agreement, the Settlement Agreements, the Plan, the Confirmation Order, and related documents, including, without limitation, any leases, in such amounts and on such terms as the Custodial Trustee may, in his discretion, determine for (i) personal injury, property damage and wrongful death and; (ii) investigation, remediation, response, closure and post-closure associated with any property that may be affected by environmental conditions at or emanating from the Properties.

Jurisdiction Language for 5.3

If the parties to the dispute are unable to resolve the dispute within the informal dispute resolution period, any party to the dispute may file a motion with the Court, and, solely if the Court determines that it does not have or chooses not to exercise jurisdiction to determine the dispute, with a Federal court of competent jurisdiction, for resolution of that dispute, and the

resulting final order shall bind all Parties, Beneficiaries and other Persons; provided, however, that if all the parties to the dispute agree, an alternative tribunal or mechanism may be used to resolve their dispute; provided further, that any dispute between the Custodial Trustee and an Environmental Agency regarding the modification, disapproval, or other action of the Environmental Agency regarding any submittal or request for approval by the Custodial Trustee shall be resolved in accordance with the existing state appellate review procedures, if available.

-----Original Message-----

From: Brooks, Patrick J. [mailto:PBrooks@ssd.com]

Sent: Tuesday, June 13, 2006 2:42 PM

To: Alan.Tenenbaum@usdoj.gov; Elise.Feldman@usdoj.gov; Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us; PierceJC@michigan.gov; JMorgan@atg.state.il.us; garypie.catherine@epamail.epa.gov; monroeb@michigan.gov

Cc: Lerner, Stephen D.; TKreller@milbank.com; Winters, Karen; LPutman@milbank.com; Stephen Samuels; Victoria Powers; M. Colette Gibbons; wvawest@ameritech.net;

Garypie.Catherine@epamail.epa.gov; Cintron-Silva.Maria@epamail.epa.gov

Subject: RE: CTA

We are having a call on the CTA at 2:45 with the CT's counsel. Anyone is free to join. Use the dial in below:

866 740 1260

479 8370

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]

Sent: Tue 6/13/2006 11:21 AM

To: Elise.Feldman@usdoj.gov; Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us; PierceJC@michigan.gov; JMorgan@atg.state.il.us; garypie.catherine@epamail.epa.gov; monroeb@michigan.gov; Brooks, Patrick J.

Cc: Lerner, Stephen D.; TKreller@milbank.com; Winters, Karen; LPutman@milbank.com; ssamuels@szd.com; vpowers@szd.com; CGIBBONS@szd.com; wvawest@ameritech.net; Garypie.Catherine@epamail.epa.gov; Cintron-Silva.Maria@epamail.epa.gov; TKern@ag.state.oh.us

Subject: RE: CTA

Patrick:

I am still gathering comments but attached are my three comments so far. These comments are not meant to suggest that any of michigan's comments are not meritorious (some of them are good although others can be handled in their Settlement Agreement -- have you sent out a draft yet?); we are letting them deal with you on their comments. We are also going let Ohio deal with you on the Prevailing Party issue under Ohio law. We will provide any further comments today. Thanks. Alan.

-----Original Message-----

From: PBrooks@ssd.com [mailto:PBrooks@ssd.com]

Sent: Monday, June 12, 2006 2:41 PM

To: Feldman, Elise (ENRD); Tenenbaum, Alan (ENRD); Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us; PierceJC@michigan.gov; JMorgan@atg.state.il.us; garypie.catherine@epamail.epa.gov; monroeb@michigan.gov

Cc: SLerner@ssd.com; TKreller@milbank.com; KWinters@ssd.com; LPutman@milbank.com; ssamuels@szd.com; vpowers@szd.com; CGIBBONS@szd.com

Subject: CTA

Importance: High

<<Redline.doc>> Counsel:

Attached is a revised version of the CTA in redline format, which I believe resolves the issues discussed on Friday. You will see that we modified Section 2.6 to require the Custodial Trustee to obtain the "buyer's agreement to complete the Environmental Actions consistent with this Agreement [the CTA] and any applicable Settlement Agreements." This limitation on the Custodial Trustee's flexibility to conduct a sale was difficult to obtain and a significant concession of the Committee and I hope the parties recognize it as such. With the resolution of this provision I think we can quickly move to finalizing the document.

Further, based on conversations with the Custodial Trustee and certain comments of various of the States, in an effort to avoid conflicts between documents, we have:

- i. moved the Environmental Information provision from the SAs into the CTA;
- ii. deleted the Owner/Operator provision from the SA and have amended Section 5.2 to pick up those concepts not already contained in the CTA to avoid conflicts and confusion;
- iii. moved the Dispute Resolution and Turnover of Funding provisions from the SAs to the CTA to have a single clear procedural approach to disputes related to the CTA and SAs; and
- iv. consolidated SAs' Cooperation provision into CTA's Cooperation provision.

With this, I hope we can obtain final approval from all parties concerned on the CTA ASAP and move forward with conclusion of the settlement agreements. I will be circulating revised settlement agreements to the parties consistent with these changes and other specific issues we have discussed to the relevant parties in short order and hope to wrap these up on our scheduled calls.

As we have discussed with everyone, once the documents are finalized we understand that you will be expediting final consideration and approval

of the documents and we appreciate all efforts in this regard.

Patrick J. Brooks
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